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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,304	07/11/2003	Marie-Pascale Audousset	226683US26	3594
22850	7590	05/15/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER NGUYEN, TRI V	
			ART UNIT	PAPER NUMBER
			1796	
			NOTIFICATION DATE	DELIVERY MODE
			05/15/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/617,304	Applicant(s) AUDOUSSET ET AL.	
	Examiner TRI V. NGUYEN	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-19,25,28-35,39-44 and 47-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-19,25,28-35,39-44 and 47-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/11/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Upon entry of the amendment filed on 2/11/08, Claims 1, 25, 35, 39, 44 and 47 are amended; Claims 2-4, 20-24, 26, 27, 36-38, 45 and 46 are cancelled. The currently pending claims considered below are Claims 1, 5-19, 25, 28-35, 39-44 and 47-50.

Based on applicants' remarks and amendments, the rejections under 102/103 over McFarlane et al. and Marapane et al. are withdrawn and the IDS dated 7/11/2003 has been considered. The examiner notes that a typographical error in the office action dated 09/10/2007 - the rejection in view of Onuki et al. of claims 13-15 should have been claims 12-14.

Claim Rejections - 35 USC § 102 & 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 5-11, 15-19, 25, 28, 30, 31, 33-44, 47 and 49-50 are rejected under 35 U.S.C. 102(e) as being anticipated or, in the alternative, under 35 U.S.C. 103(a) as obvious over Grossinger et al.

Grossinger et al. disclose a method for determining a dye formulation based on a targeted coloration of a hair sample analyzed by a spectrophotometer (parag. 59-62, 84 and fig. 2, 3 and 5d). Grossinger et al. disclose the feature of an algorithm in the calculations, displays and databases (parag. 59-62 and 122).

Claims 25, 28, 30, 31 and 39-43 describe the system and program of the method claims thus the prior art of Grossinger et al. as set forth above are relied upon to reject claims 25, 28, 30, 31 and 39-43.

Accordingly, the reference of Grossinger et al. anticipates the material limitations of the listed claims.

In the alternative that the above disclosure is insufficient to anticipate the above listed claims such as a display type, it would have nonetheless been obvious to the skilled artisan to achieve the methodology, as the reference teaches each of the claimed steps for the same utility and such modifications are recognized as being well within the purview of the skilled artisan to yield predictable results.

4. Claims 1, 5-11, 15-19, 25, 28-35, 39-44 and 47-50 are rejected under 35 U.S.C. 103(a) as obvious over Ladjevardi in view of Bartholomew et al.

Ladjevardi discloses a process of hair coloring by determining a targeted hair coloration, analyzing a sample of hair via a camera, performing a calculation and providing a hair dyeing formulation (parag. 18, 19, 24, 25, 28, 29, 32, 35, 36, 51 and 52). However, Ladjevardi does not explicitly disclose the displaying and networking features. In an analogous art, Bartholomew et al. disclose a process of preparing a dye recipe based on a targeted color via a calculation of database of components (parag. 39-40, 107, 108 and 119). Bartholomew et al. disclose the features of a spectrophotometer, networked computers via the Internet and displays (parag. 106-109). The claims would have been obvious because the technique for improving a particular class of devices was part of the ordinary capabilities of a person of ordinary skill in the art, in view of the teaching of the technique for improvement in other situations.

Claims 25, 28, 20, 31 and 33-43 describe the system and program of the method claims thus the prior art of Ladjevardi in view of Bartholomew et al. as set forth above are relied upon to reject claims 25, 28, 20, 31, 33-47 and 49-50.

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5. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grossinger et al. or Ladjevardi in view of Bartholomew et al. as applied to the claims above, and further in view of Onuki et al.

Grossinger et al. or Ladjevardi in view of Bartholomew et al. disclose the hair dying process but do not explicitly disclose the specific dye components. In an analogous art, Onuki et al. discloses that hair dyes have oxidation base, couplers and direct dyes (abstract, col 2, lines 29-31 and col 18, line 65 to col 19, line 9). Because the references teach hair dyeing compositions, the claim would have been obvious because the substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

6. Claims 29, 32 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grossinger et al. as applied to the claims above, and further in view of Saita et al.

Grossinger et al. disclose the hair dying process but do not explicitly disclose the Internet networking environment. In an analogous art, Saita et al. disclose a hair color advice system networked via the Internet. The claim would have been obvious because the technique for improving a particular class of devices was part of the ordinary capabilities of a person of ordinary skill in the art, in view of the teaching of the technique for improvement in other situations.

Response to Arguments

7. Applicant's arguments filed on 2/11/08 have been fully considered but they are not persuasive.

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Applicants argue that the cited references of Ladjervardi and Grossinger et al. do not disclose the step of “determining a dye product for obtaining a dye product for obtaining a theoretical coloration that differs from the target coloration by not more than a predetermined theoretical value” on page 11, the examiner respectfully disagrees as Grossinger et al. disclose the matching of a hair color via an iterative calculation process that minimize the error until an accepted value is reached (see Figure 4 and § 62) and Ladjervardi teach the theoretical calculation via maximum likelihood principle to arrive at achievable desired color (§37).

Regarding the mixing of commercial products, it is noted that the instant claims do not preclude the use commercially available dye products.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to TRI V. NGUYEN whose telephone number is (571)272-6965. The examiner can normally be reached on M-F 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. V. N./
Examiner, Art Unit 1796

/Lorna M Douyon/
Primary Examiner, Art Unit 1796